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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,328	02/05/2004	Hiromi Tabuchi	1131-0500P	4066
2292 7590 09/17/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER KEMMERLE III, RUSSELL J	
			ART UNIT 1731	PAPER NUMBER
			NOTIFICATION DATE 09/17/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/771,328	Applicant(s) TABUCHI ET AL.	
	Examiner Russell J. Kemmerle	Art Unit 1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The previous rejection under 35 USC §112, first paragraph in the Office Action 19 April 2007 is withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noe (US Patent 5,494,055) in view of Miyauchi (US Published Application 2002/0,074,007).

Noe teaches a rod shaped filler including tobacco, an inner wrapper surrounding the rod shaped filler, an outer wrapper surrounding the inner wrapper, and a perfume layer in between the inner and outer wrapper that weakens the odor of the sidestream smoke (claim 1). Noe further discloses covering the entire surface of the inner wrapper with the perfume material (Col 4 lines 30-40).

Noe does not expressly teach that the perfume emitting layer contain a glue for carrying the perfume material.

Miyauchi discloses a method of improving the smell of a sidestream smoke of tobacco, where a perfume material is used to improve the smell, and a polyvinyl acetate glue may be used as the carrier for the perfume material (abstract).

It would have been obvious to one of ordinary skill in the art, at the time of invention by applicant, to have modified the method taught by Noe of forming a cigarette

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by using the method taught by Miyauchi of using polyvinyl acetate glue as the carrier for the perfume material. This would have been obvious because Miyauchi discloses that such glue is helpful in adhering a perfume material to a cigarette wrapper.

It would have been further obvious to provide an inner wrapper without overlap of the opposite edges because such a configuration is one of a very limited number of design choices for the inner wrapper, and such a configuration is less likely to give the appearance of an interior seam from the outside of the cigarette. It would have similarly been obvious to create an outer wrapper having an overlap of the opposite edges because that is also one of a limited number of design choices, and such a configuration would result in a better seal for the outer wrapper of the cigarette.

Referring to claim 5, Noe discloses that the perfume material be a microcapsule which could be classified as a grain (Col 4 lines 40-50).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noe in view of Miyauchi and Baker (US Patent 4,624,268)

Noe and Miyauchi are relied upon as discussed above, but do not expressly teach the use of an additive for reducing the sidestream smoke.

Baker teaches that sidestream smoke may be reduced by the use of chemicals added to the cigarette paper (abstract).

It would have been obvious to one of ordinary skill in the art, at the time of invention by applicant, to have modified the invention taught by Noe in view of Miyauchi as discussed above, by adding the sidestream smoke reducing chemicals of Baker to

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the cigarette paper. This would have been obvious in order to achieve the desired result of reduced sidestream smoke.

Claims 6-8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Noe in view of Miyauchi and Lowman (US Patent 2,999,520)

Referring to claim 6, Noe teaches a machine for manufacturing double wrapper cigarettes having a first and second path for inner and outer wrappers, a wrapping section, a perfume supply device supplying perfume to one of the webs between the webs to weaken the odor of sidestream smoke, and covering the entire inner surface of the inner wrapper (Col 4 lines 10-50).

Noe does not specifically disclose a glue for carrying the perfume material, or a cutting section for cutting sections of a predetermined length.

Miyauchi discloses polyvinyl acetate glue as a good carrier of perfume materials (abstract).

Lowman teaches a cigarette machine that involves a cutter for creating sections of a predetermined length (Col 2 lines 50-53).

It would have been obvious to one of ordinary skill in the art, at the time of invention by applicant, to modify the manufacturing machine of Noe by further incorporating the glue of Miyauchi to carry the perfume material. This would have been obvious because Miyauchi discloses that the use of such a glue as a carrier for a perfume material is effective in reducing sidestream smoke. It would have been further obvious to use a cutter such as the one taught by Lowman since such a device is necessary for processing cigarettes into the desired size.

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Referring to claims 7 and 8, Noe further discloses applying glue and spraying (diffusing) (Col 4 lines 10-50), which would require the use of a nozzle.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Noe in view of Miyauchi, Lowman, Marchese (US Patent 2,320,702) and Eckstein (US Published Application 2001/0,009,938).

Noe, Miyauchi and Lowman are relied upon as discussed above, but fail to specifically teach using brush rollers to apply the perfume material and to remove any excess from the web.

Eckstein teaches that brush coating is customary in the paper industry (paragraph 110).

Marchese teaches the removal of a surplus material from a carrier using a brush roller (Page 2, Col 2 lines 48-52).

It would have been obvious to one of ordinary skill in the art, at the time of invention by applicant, to modify the method taught by Noe, Miyauchi and Lowman as discussed above, by using a brush to coat the perfume material onto the web, and to then later use a brush roller to remove any excess perfume material as taught by Eckstein and Marchese, respectively. This would have been obvious because these are taught to effective means of getting a desired quantity and quality of a coating material on a carrier.

Response to Arguments

Applicant's arguments filed 14 August 2007 have been fully considered but they are not persuasive.

Applicant argues that when the teaching of Miyauchi is applied to the rod covering of Noe, a rod covering is provided in which the opposite side edges of the outer layer and/or inner layer are bonded to each other with seam adhesive containing the flavorant.

However, Noe discloses that the perfume material is sprayed on the paper (see Col 4 lines 34-36). Nowhere does Noe limit the application of the perfume material to the portion in which opposite side edges of the layer are bonded to each other. Thus, applicant's contention that this would be the only location where the perfume material would be found is inconsistent with the teachings of Noe of a perfume material covering the entire rod covering.

Applicant next argues that Noe teaches wrapping the inner and outer layers at the same time, which would make the limitation of an inner layer in which the opposite side edges of that layer do not overlap. However, there does not appear to be support for this assertion, as it doesn't appear that Noe requires the layers to be wrapped around the tobacco filler at the same time, and thus would not require the configuration of the opposite side edges of the outer layer not coming into direct contact with each other as asserted by the applicant.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell J. Kemmerle whose telephone number is 571-272-6509. The examiner can normally be reached on Monday through Friday, 8:30-4:00 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/RJK/


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